

MM Dkt. 92-51

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C.

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~~FILE~~

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In re Petition for Declaratory
Ruling that Lenders May Take a
Limited Security Interest
in an FCC License

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Federal Communications Commission
Office of the Secretary

MMB No.
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To: The Commission

ORIGINAL
FILE

PETITION FOR DECLARATORY RULING

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an established Commission policy, is not supported by the Communications Act. The Act prohibits a licensee from obtaining a property interest in the frequency; it does not prohibit a licensee from giving a security interest in the license itself. A security interest would not affect the FCC's unquestioned ability to approve or disapprove the renewal, assignment, or transfer of control of the license, and would not affect the Commission's long-standing policy prohibiting a transferring licensee from retaining a reversionary interest in the license. A security interest, which is merely an interest in whatever rights a licensee has in the license, would require that the sale of the license be at a "public or private sale".

Security interests are routinely obtained in other forms of licenses, and the Uniform Commercial Code expressly contemplates that rights under the Code are subject to other federal statutory requirements. Accordingly, the Commission may permit security interests in licenses without diluting its authority.

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- We do not seek permission for any automatic transfer of a license to anyone under any circumstances;
- We do not contend that a licensee has any property right in its frequency of operation.

All that we mean to suggest here is that there is no reason for -- or statutory requirement -- prohibiting a security interest in a license. Similar to the Commission's historic allowance of stock pledges, a lender holding a security interest in a broadcast license should be permitted to force a "public or private sale" of the licensed facility, subject to FCC approval.

In several cases over the years dealing with unlawful reversionary interests in broadcast licenses, the Commission has issued loose dicta to the effect that a license may not be used to secure the interests of a station's creditors. ^{1/} The courts have relied on this dicta in refusing to recognize the validity of security interests in FCC licenses. See, e.g., Stephens Industries, Inc. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986); In re Smith, 94 B.R. 220, 221 (Bankr. M.D. Ga. 1988). The result is that station financing is more difficult to obtain than would be the case were security interests

^{1/} See discussion at pp. 5-10, infra.